

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3086 OF 2001

Vijay Kumar Alagh

.. Petitioner

V/s

The City Co-operative Bank Ltd. & Ors. .. Respondents

Mr.P.V. Nichani for the Petitioner.

Mr.K.V. Tembe for the Respondent No.1.

CORAM : D.G. KARNIK, J.

DATE : 24TH APRIL 2007

P.C. :

1. Heard learned counsel for the parties.
2. This petition is directed against the order dated 2nd May 2001 passed by the Maharashtra State Cooperative Appellate Court rejecting the Petitioner's request for extension of time for payment of money to the Respondent No.1 as per the consent order.
3. The Petitioner is a borrower and had borrowed money from the Respondent No.1 Cooperative Bank. The Petitioner having failed to pay the money borrowed, the Respondent No.1 filed a dispute under section 91 of the

Maharashtra Cooperative Societies Act against the Petitioner and the guarantors for recovery of money. After considering the evidence adduced by the parties, the Cooperative Court passed an award against the Petitioner and the guarantors. Aggrieved Petitioner filed Appeal No.170 of 2000 before the Maharashtra State Cooperative Appellate Court. In appeal, a consent order was passed on 21st November 2000 whereby the Petitioner was granted time to pay the amount awarded in instalments. The consent order further provided that in the event the Petitioner failed to pay any of the instalments as provided under the consent order, the appeal shall stand dismissed.

4. The Petitioner committed default in payment of first instalment itself. He only paid part of the first instalment and applied for extension of time to pay the balance. By the impugned order dated 2nd May 2001, the Cooperative Appellate Court rejected the request. That order is impugned in this writ petition.

5. The order dated 21st November 2000 passed in Appeal No.170 of 2000 by the Cooperative Appellate Court is a consent order. The order ex-facie reads - " By consent, following order is passed.....". Thus, the order is based on agreement of the parties. The

agreement of the parties cannot be modified by the Court without the consent of all the parties thereto. The Respondent No.1 did not consent but in fact objected for extension of time. In the circumstances, without the consent of the Respondent, the Cooperative Appellate Court could not have extended the time. I, therefore, see no error in the order of the Cooperative Appellate Court rejecting the request of the Petitioner for extension of time.

6. Learned counsel for the Petitioner submitted that some amount has been paid after filing of the petition. Counsel for the Respondent No.1 says that the amount has been accepted without prejudice to its right in the order. In any way, we are not concerned with the subsequent payment as the amount was accepted without prejudice.

7. For the reasons aforesaid, there is no merit in the petition. The petition is rejected.

8. At the request of the learned counsel for the Petitioner, ad-interim order passed by this court on 4th July 2001 shall remain in force for a further period of 4 weeks from today.

(D.G. KARNIK, J.)